



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: MOP - 203139

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on September 9, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sawyer County Human Services regarding Medical Assistance (MA), a hearing was held on November 4, 2021, by telephone.

The issue for determination is whether the agency correctly seeks to recover an overpayment of BadgerCare Plus benefits in the amount of \$10,622.55 for the period from March 1, 2019 as a result of petitioner's error in failing to report earned income exceeding the program's income limit.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Sawyer County Human Services  
10610 Main Street  
PO Box 730  
Hayward, WI 54843

**ADMINISTRATIVE LAW JUDGE:**

Beth Whitaker  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Sawyer County.

2. On November 15, 2018, petitioner contacted the agency by telephone to apply for FS and renew medical assistance.
3. On November 16, 2018, the agency issued to petitioner an About Your Benefits notice, informing her that that she and four members of her household were enrolled in BCP and instructed her that if her household income exceeded \$2,811.67, she was required to report that to the agency by the tenth day of the next month.
4. In January 2019, petitioner's household income exceeded the program limit.
5. On or before July 26, 2019, the agency received a wage discrepancy alert, indicating that the income petitioner reported was different from that the employers reported to the State Wage Information Collection Agency (SWICA).
6. On August 26, 2021, the agency reviewed the overpayment referral and determined based on a combination of employer-reported wages and SWICA wage information that petitioner was overpaid BCP benefits.
7. On August 27, 2021, the agency issued to petitioner a BCP overpayment notice, explaining that she was not eligible for the BCP benefits received from March 1, 2019 to September 30, 2019 , in the amount of \$10,622.55 as a result of member error for failure to report income changes.
8. On September 2, 2021, the agency issued to petitioner a repayment agreement regarding the BCP overpayment balance of \$10,622.55, with a deadline to pay in full or enter into the repayment agreement by September 25, 2021.
9. On September 13, 2021, the petitioner filed a request for hearing with the Division.

### DISCUSSION

Medical assistance overpayment recovery is authorized by Wis. Stat., §49.497(1): (a) The agency may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following: 1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665. 2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits. 3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements. See also the agency's Badger Care Plus Handbook, §28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable. BadgerCare Plus Handbook, §28.3.

An overpayment is determined as follows: "Use the actual income that was reported or required to be reported in determining if an overpayment has occurred. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided. If the case was ineligible for BadgerCare Plus, recover the amount of fee-for-service claims paid by the state and any HMO capitation payments the state paid. Use ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s)." Handbook §28.4.2. As of April 1, 2014, all childless adults became eligible for BadgerCare Plus with an income limit equal to 100% of the Federal Poverty Level. See Wis. Stat., §49.45(23) for the law, and the Handbook, §50.1 for the limits.

For the relevant period of time, BCP recipients were required to report if income in a month rose above those levels. Handbook, §27.3. The report must be made by the tenth of the next month. BadgerCare Plus will close the following month if income remains above the limit.

Petitioner testified that she did provide income information in a timely manner and that the overpayment was the agency's fault for not acting on her report(s). Petitioner had no documentary evidence to support her testimony and was not credible. The agency's records were consistent and complete and were found to be more reliable. Petitioner did not dispute the income amounts, only whether she reported them.

Because petitioner did not report her income, continued to be enrolled in BCP and capitation rates and payments were made by medical assistance that petitioner was not eligible to receive. The agency relied on a Total Benefits Paid by Medicaid Report, showing monthly amounts of net paid amounts and capitated services paid by BCP for petitioner by month (March 2019, \$6.98; April 2019, \$1,685.88; May, 2019, \$6.98; June 2019, \$918.27; July, 2019, \$6.98; August \$1,756.36; and September, 2019, \$6.98.) Petitioner did not dispute these amounts paid. The agency is required to seek recovery of the amount of BCP benefits incorrectly provided and to recover the amount of fee-for-service claims paid by the state and any HMO capitation payments the state paid.

The agency established by a preponderance of the evidence that petitioner received BCP benefits for from March 2019 to September 2019 that she was not eligible to receive. The agency documented the methods by which it calculated the overpayment. Petitioner did not dispute that it correctly determined the amount of benefit received. Petitioner is liable for overpayment. The agency correctly seeks to recover these benefits.

### CONCLUSIONS OF LAW

The agency correctly seeks to recover an overpayment of BCP benefits in the amount of \$10,622.55 for the period from March 1, 2019 to September 30, 2019 caused by petitioner's error in failing to report earned income exceeding the program's income limit.

**THEREFORE, it is** **ORDERED**

That the petition for review is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES

IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

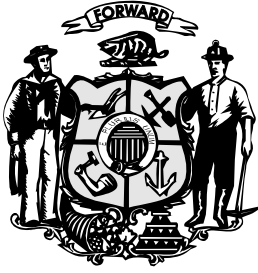
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 6th day of January, 2022

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Beth Whitaker  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 6, 2022.

Sawyer County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability